

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

WILLIAM J. VAJK and  
GLORIA C. VAJK,

Plaintiffs,

v

2:10-cv-114

CITY OF IRON RIVER, MICHIGAN,  
ROGER ZANON, THOMAS KING,  
RAY COATES, EDWARD MARCELL,  
MICHAEL BROZACK, SUZANNE  
JOHNSON, RICHARD ANDERSON,  
COUNTY OF IRON,  
MARCIA CORNELIA, and  
MICHIGAN MUNICIPAL LEAGUE,

Hon. Robert Holmes Bell  
U.S. District Judge

Defendants.

William J. Vajk  
Gloria C. Vajk  
IN PRO PER  
5113 W. US2 Highway  
Iron River, MI 49935  
(906) 265-7198

Melissa Powell Weston (P57048)  
IRON COUNTY PROSECUTING ATTORNEY  
Attorneys for Iron County and Marcia Cornelia  
Iron County Courthouse  
2 S. Sixth Street, Ste. 1  
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(906) 875-6628

Susan D. MacGregor (P41741)  
KITCH DRUTCHAS WAGNER  
VALITUTTI & SHERBROOK  
Attorneys for City of Iron River, Zanon, Coates,  
Marcell, Brozack, Johnson, Anderson, King, MML  
220 West Washington Street, Ste. 500  
Marquette, MI 49855-4344  
(906) 228-0001

**DEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS**

Defendants, Michigan Municipal League, City of Iron River, Zanon, King, Coates, Marcell, Brozak, Johnson and Anderson, by and through their attorneys, KITCH, DRUTCHAS, WAGNER, VALITUTTI & SHERBROOK, pursuant to the Local Rules of Practice and Procedure of the United States District Court for the Western District of Michigan, 54(d)(1); as well as Fed.R.Civ.P. 54(d)(1), and 42 U.S.C. § 1988, ask the Court to award attorney fees and costs.

Plaintiffs filed this three-count civil rights suit on June 15, 2010. The first count challenged the constitutionality of certain water fees and the collection of unpaid fees by means of the property tax rolls. The second count challenged the constitutionality of the City's nuisance ordinance which periodically requires property owners to cut or remove weeds on their property. The third count asserted that the Michigan Municipal League conspired with the City and County to deprive the plaintiffs of their civil rights. Plaintiffs sought damages for constitutional violations (specifically, due process, bill of attainder, equal protection, and conspiracy to violate civil rights) pursuant to 42 U.S.C. § 1983 and/or 1985.

In lieu of filing an Answer to the Complaint, the instant defendants responded to the Complaint with a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6).

Thereafter, and over the course of just four months, plaintiffs filed **no less than 14 further documents, in the form of motions and responses and briefs**, which the defendants were forced to review and, often, to file responses, before, ultimately, on January 12, 2011, a judgment was entered in favor of these defendants.

#### A. STATUTORY COSTS

These defendants, as prevailing parties now request that the Court award statutory costs to them as the prevailing party, as authorized by 28 U.S.C. §1920 and 1923. These defendants ask that the clerk tax the following costs against plaintiffs William J. Vajk and Gloria C. Vajk, and in favor of these defendants, pursuant to the Judgment:

CATEGORY		AMOUNT REQUESTED	ATTORNEY COMMENTS
A.	<b>Docket Fees</b> <i>Pursuant to 28 U.S.C. §1923(a)</i>	<b>\$10.00</b>	Motions for Summary Judgment filed 2/4/10 (2).

<b>B.</b>	<b>Printing, Exemplification &amp; Copy Fees</b> <i>Pursuant to 28 U.S.C. §1920(3) or (4)</i>	<b>\$21.00</b>	<u>Courtesy copies to plaintiffs and chambers</u>  Motion, brief and exhibits in support of summary judgment (filed 8/13/10) \$9.90 (66 pp @ \$.15/p)  Reply briefs & exhibit (filed 10/11/10) \$6.30 (42 pp @ \$.15/p)  Response to Pltfs' Motion for Judgment on the Pleadings and to Strike Affidavit and Reply (filed 10/27/10) \$1.50 (10 pp @ \$.15/p)  Responses to Pltfs' Motion to Stay and Motion to Strike (filed 11/22/10) \$3.30 (22 pp @ \$.15/p)
	<b>TOTAL</b>	<b>\$31.00</b>	

If allowed, the grand total of **statutory costs** requested is \$31.00.

#### B. ATTORNEY FEES UNDER § 1988

The prevailing party in a civil rights action is authorized to seek an award of attorneys fees:

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs...

42 U.S.C. § 1988(b).

While the statute exists to "make it easier for a plaintiff of limited means to bring a meritorious suit," Congress did contemplate that prevailing defendants in civil rights cases would avail themselves of this remedy. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 420; 98 S. Ct. 694 (1978). The Supreme Court indicated, in the context

of a Title VII case, that Congress "wanted to protect defendants from burdensome litigation having no legal or factual basis." *Id.* A district court may award attorney's fees to a prevailing civil rights defendant "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation." *Id.* at 421; *Hensley v. Eckerhart*, 461 U.S. 424, 429, n. 2; 103 S. Ct. 1933 (1983).

Clearly this is a case that warrants an award of attorneys fees to the defendants. The claim was so clearly without merit. But even more compelling is the plaintiffs' relentless filing of documents during the prosecution of the case. The plaintiffs' filings were lengthy, repetitive, and typically raised issues of no relevance to the issues in the case, failed to address an issue in an appropriate way, or lacked appropriate or helpful legal support. While plaintiffs proceeded in this case *in pro per*, such that attorneys fees and costs under 28 U.S.C. § 1927, are not available, the language in and the policy underlying that statute are called to mind:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof **who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.**

The plaintiffs unreasonably and vexatiously multiplied the proceedings in this case. Per the attached documentation, **Exhibit A**, the instant defendants expended nearly \$8,000 in attorneys fees (at reasonable rates of either \$125 - 150/hour, depending on which attorney in the office performed the task) during the seven months between June through December 2010.

These defendants therefore ask the Court to award a "reasonable" attorney fee of just \$5,000, which these defendants believe will serve the goal of discouraging these and other plaintiffs from bringing meritless claims and/or pursuing such litigation in a

manner that causes undue burden to the defendants. Had defendants only had to file their motion to dismiss and a reply, as would have been reasonable, they likely would have incurred less than \$3,000. These defendants seek reimbursement only for the difference.

I declare under penalty of perjury that the foregoing states are true, that the recited amounts and costs are correct and were necessarily incurred in the defense of this action, and that the services for which fees have been charged were actually and necessarily performed.

Respectfully submitted,

KITCH DRUTCHAS WAGNER  
VALITUTTI & SHERBROOK

Dated: January 26, 2011

By: /s/ Susan D. MacGregor  
Susan D. MacGregor

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